

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12956, of Dorothy F. Clark, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3103) to use the basement, first and second floors of the subject premises as an apartment house in an R-3 District at the premise 1427 - 33rd Street, N. W., (Square 1244, Lot 173).

HEARING DATE: June 13, 1979

DECISION DATE: July 11, 1979

FINDINGS OF FACT:

1. The subject property is located on the east side of 33rd Street between "O" and "P" Streets, N. W.

2. The property is improved with a two story row dwelling which also has a basement. There are three rental apartment units, one on each level. They are presently occupied.

3. The applicant acquired the property in 1955 as a three unit building and has continued to rent the three units since that time.

4. No structural changes have been made to the building. It has been maintained in its present state since the time of purchase.

5. The applicant has been operating without a Certificate of Occupancy for the premises. The applicant testified that she was unaware of the necessity to have a Certificate of Occupancy and had instead been applying for and been receiving an apartment license. A number of these licenses issued to the applicant were submitted to the file at the public hearing. The applicant also submitted affidavits attesting to the use of the property as an apartment house.

6. With the adoption of the 1958 Zoning Regulations, this use would have become non-conforming if it had had a Certificate of Occupancy. The property was never registered as a non-conforming use.

7. The applicant proposes to continue the use of the basement, first and second floors of the subject premises as an apartment house. To continue this use in the R-3 District, the applicant needs the approval of the BZA.

8. The subject property has been and continues to be managed by the applicant. The applicant has never received any complaints about the use of the property.

9. The Office of Planning and Development by report dated June 8, 1979, recommended that the application be approved on the grounds that although this property does not exhibit the unusual or extraordinary circumstances or conditions which would warrant the granting of a use variance, the applicant provided the evidence that the property was used as an apartment building prior to 1958, and that the continued use of this property as a three-unit apartment building will not be detrimental to neighboring properties nor to the intent or purposes of the Zoning Regulations. The Board so finds.

The OPD noted that the approval of this application will establish the apartment use as a non-conforming use and any future change in this use will require the Board's approval.

10. The Advisory Neighborhood Commission 3-A made no recommendation on the application.

11. The Citizens Association of Georgetown opposed the application on the grounds that the basement apartment was too far below grade and that there might not be enough light for that unit.

12. There were two letters on record from owners of nearby property opposed to the application. One letter opposed the conversion of a private home to an apartment house as indicative of the over-building of the neighborhood. The other letters opposed the application on the grounds that the building has been operated illegally as an apartment house for at least ten years, that the three units as opposed to one unit presents an added fire hazard and more noise, that scarce parking would become more scarce, and that the two additional units would be detrimental for health and safety reasons.

13. As to the points raised in opposition to the application, the Board finds that if the use had had a proper Certificate of Occupancy prior to May 12, 1958, it would be a valid non-conforming use. The Board finds that approval of this application would not create any new demands for municipal services and parking, since the three units have existed for more than twenty years, even though there was no Certificate of Occupancy. While the Board is always concerned over unauthorized use of any premises, the Board find that the existence of such use does not bar the applicant from seeking relief from the Board to bring the use into compliance. As to compliance with other municipal

codes and ordinances, including housing, fire and health, the Board finds that it has no jurisdiction over such codes, and that before a proper Certificate of Occupancy can be issued, the proper offices of the Government of the District of Columbia must determine that all relevant codes and ordinances have been complied with.

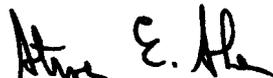
CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact, the Board concludes that the variance requested is a use variance, the granting of which normally requires the showing of an undue hardship upon the owner arising out of the property. In this case however, the Board concludes that the evidence is uncontroverted that the subject dwelling has housed three rental apartment units since prior to 1958 and that if a Certificate of Occupancy had been obtained prior to 1958, the use would be a legitimate non-conforming use. The Board notes that the applicant has annually obtained a license to operate the use and that the applicant was unaware of the necessity to obtain a Certificate of Occupancy.

The Board concludes that to the granting of the requested relief, which will permit the continued use of the premises, will not cause substantial detriment to the public good and will not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map. Accordingly, it is ORDERED that the application be GRANTED.

VOTE: 3-1 (Charles R. Norris and Leonard L. McCants to grant, William F. McIntosh to grant by proxy, Chloethiel Woodard Smith opposed, Walter B. Lewis not voting, not having heard the case).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 10 SEP 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.